Filed 3/6/19 Point San Pedro Road Coalition v. County of Marin CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

POINT SAN PEDRO ROAD COALITION, Plaintiff and Respondent, v. COUNTY OF MARIN et al., Defendants and Appellants; SAN RAFAEL ROCK QUARRY, INC., Real Party in Interest and Appellant.	A152144 (Marin County Super. Ct. No. CIV1504430)

Appellants County of Marin and its board of supervisors (County) and Real Party in Interest San Rafael Rock Quarry, Inc. (SRRQ) jointly appeal from an order awarding the sum of $368,959 in attorney fees to respondent Point San Pedro Road Coalition (Coalition)[1] under the private attorney general statute (Code Civ. Proc., § 1021.5.[2])

We affirm.

[1] The Coalition is "a California nonprofit corporation founded in 1999 and chartered to protect the interests of residents living along Point San Pedro Road in the City of San Rafael, Marin County, California and to protect the local environment. Members of the Coalition live along Point San Pedro Road and in residential neighborhoods located near or adjacent to the SRRQ's property in San Rafael."

[2] All further unspecified statutory references are to the Code of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND[3]

SRRQ is the owner of property on which is situated a quarry and a plant that produces asphaltic concrete (hereinafter referred to as "Quarry"). In 1982, the Quarry and plant operations became a nonconforming use under the County zoning ordinance. Asphaltic concrete was then produced on-site by processing mined material from the quarry and imported sand, but no other imported materials were used such as asphalt grindings. In July 2013, by Resolution No. 2013-52, the County approved Amendment No. 2 to SRRQ's mining permit, allowing SRRQ to import asphalt grindings onto the quarry site for use in the production of asphaltic concrete. The amendment was set to expire on October 1, 2015, unless the County acted to extend it.

In October 2013, following participation in administrative proceedings before the County, the Coalition filed a petition challenging Resolution No. 2013-52 (First Action), alleging Amendment No. 2 allowed for an impermissible expansion of the Quarry's nonconforming use in violation of the County zoning ordinance. Appellants filed a joint demurrer, seeking dismissal on the ground the petition was not timely served under Government Code section 65009(c)(1). The Coalition opposed the demurrer, arguing the time limit for filing a petition was governed by the Surface Mining and Reclamation Act (SMARA; Pub. Res. Code, §§ 2710, et seq.). The trial court agreed with the Coalition and overruled the demurrer. Appellants then moved for judgment on the pleadings, urging dismissal on the ground the Coalition failed to exhaust its administrative remedies by filing an appeal with the California State Mining and Geology Board (Mining Board) before seeking judicial relief. The trial court agreed with appellants and dismissed the petition for failure to exhaust administrative remedies. The Coalition filed a timely appeal.

In September 2015, and while the Coalition's appeal in the First Action was pending, the County issued Resolution No. 2015-108, approving SRRQ's request to extend Amendment No. 2. The new resolution extended Amendment No. 2 for two to

---

[3] We set forth only those facts necessary to resolve this appeal.

four years. To avoid a dismissal for failure to exhaust administrative remedies, the Coalition filed a timely appeal with the Mining Board, challenging Resolution No. 2015-108, which appeal was denied.

In December 2015, following denial of its appeal with the Mining Board and while its appeal in the First Action was still pending in this court, the Coalition filed a new petition challenging Resolution No. 2015-108 (Second Action). The substantive claim in the Second Action was essentially identical to the substantive claim in the First Action – namely that the extension of Amendment No. 2 allowed for an impermissible expansion of the Quarry's nonconforming use in violation of the County zoning ordinance. The trial court granted the Coalition's petition and judgment was entered on October 4, 2016 directing the County to vacate Resolution No. 2015-108. On December 12, 2016, this court reversed the order dismissing the First Action and remanded the matter to the trial court with directions to enter an order dismissing that action on the ground of mootness.

On February 17, 2017, the Coalition filed its motion seeking an award of attorney fees for all work performed in both lawsuits under section 1021.5. The Coalition sought $335,260 for the First Action and $191,784 for the Second Action (with a multiplier of 1.25 applied to both sums), for an aggregate award of $658,805. Appellants opposed the request, in pertinent part, on the ground that the Coalition was not entitled to any fees incurred in connection with the First Action because it was a separate action in which the Coalition had not prevailed and the work associated with the First Action had not materially contributed to the trial court's resolution of the Second Action.

Following oral argument, the trial court awarded attorney fees in the aggregate sum of $368,959, consisting of $115,151.50 [35% of requested sum of $335,260] for the First Action and $192,314 [100% of requested sum of $191,784 plus $530 (one hour for oral argument)] for the Second Action, and the application of a multiplier of 1.2 to both sums. In a written decision, the court explained its reasons for its award. The court began by finding that the Coalition was "undoubtedly" entitled to an award of attorney fees for the prosecution of the second writ petition because it had been successful in that prosecution, which enforced an important right affecting the public interest and conferred

a significant benefit upon a large class of persons, and "the financial burden of private enforcement here was such as to make an award appropriate."

The court then addressed the parties' "primary dispute" which centered on the Coalition's request for attorney fees incurred in the prosecution of the First Action. While the two lawsuits "were unquestionably separate actions," and the Coalition was not the "successful" or prevailing party in the First Action, the court noted that an award of attorney fees was allowed "upon a showing" that the legal work associated with the First Action "was closely related to the second action and was useful to the resolution of the second action." The court then found that "the first action was indeed closely related to the second action. The petitions sought the same substantive relief and were similarly drafted. The factual and procedural histories were essentially the same. The legal claims in each action stemmed from nearly identical substantive permit amendments by the Board of Supervisors."

Focusing on the attorney fees incurred in the First Action, the court found that the bulk of the fees were "centered on unique procedural matters that had no relationship or bearing on the second action" and were "not useful in the second action by any measure." Accordingly, the court denied attorney fees associated with the First Action that addressed "the procedural issues . . . (including opposing the demurrer, opposing the motion for judgment on the pleadings, and [filing] the appeal)." In contrast, the court found "the legal work addressing the substantive issues underlying the first petition undoubtedly was useful in the second action. For instance, the drafting of the petition and the supporting points and authorities in the second action certainly stemmed from the work on the first petition. Clearly, the legal fees incurred in the second action were reduced by way of the legal work performed in the first action." Accordingly, the court awarded compensation for work associated with the First Action "for the items detailed in items 1, 2, 3, 4, 5, and 8 in Exhibit 2," which was attached to counsel's declaration. The referenced items, described in detail, included client conferences to discuss legal strategy, services performed in connection with the administrative proceedings before the County regarding its initial approval of Amendment No. 2, file review, legal research,

and the drafting of the petition and memorandum of points and authorities and request for judicial notice that were filed and served in the First Action.

Appellants timely appealed.

DISCUSSION

Appellants raise two challenges to the order granting section 1021.5 attorney fees, neither of which requires reversal. Section 1021.5 provides, in pertinent part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

Appellants initially argue the order should be reversed in its entirety because, as they asserted in the related appeal in Case no. A150002, the trial court erred when it granted the underlying petition for a writ of mandate in the Second Action. Because we have affirmed the judgment in the related appeal in Case no. A150002, this argument fails.

Appellants also substantively challenge the order, arguing that the trial court erred in granting any fees for legal work associated with the First Action for two reasons: (1) the First Action was a separate action in which the Coalition did not prevail; and (2) the legal work associated with the First Action did not materially contribute to the trial court's resolution of the Second Action. For the reasons we now explain, appellants' arguments are unavailing.

In resolving a request for attorney fees in the Second Action, the trial court had the authority to consider and award compensation for "time spent on other separate but closely related court proceedings." (*Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 849.) While the First Action "was technically a separate

action," and "not a necessary prerequisite to [the Second Action], the two were closely related and involved identical [substantive] issues." (*Id*. at p. 850.)

Additionally, "[a]s to the principles applicable when a plaintiff has prevailed on some claims but not others, . . the threshold determination [is] whether plaintiff was a prevailing party, and plaintiffs may be considered prevailing " ' "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." [Citation.]' [Citation.]" (*Wallace*, *supra*, 170 Cal.App.3d at p. 849.) Having found that a prevailing plaintiff is entitled to attorney fees, the trial court then determines a reasonable fee " 'after consideration of a number of factors, including the nature of the litigation, . . . *the success or failure, and other circumstances in the case*.' " (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1094, 1096, italics added, quoting *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624.) "If plaintiff fail[s] to prevail on claims unrelated to . . . successful claims, work on the unrelated claims cannot be deemed to be expended in pursuit of the ultimate successful result. In contrast, where a plaintiff's claims for relief involve a common core of facts or are based on related legal theories, the court [focuses] on the significance of the overall relief obtained in relation to the hours reasonably expended; where plaintiff has obtained 'excellent results,' his or her attorney should recover a fully compensatory fee. " (*Wallace*, *supra*, at p. 850, citing *Hensley v. Eckerhart* (1983) 461 U.S. 424, 434-435.)

Here, the record shows that the Coalition's overarching purpose in seeking judicial relief was to secure a judgment setting aside Amendment No. 2, which had been initially approved by County Resolution No. 2013-52 and later extended by County Resolution No. 2015-108. Notwithstanding the fact that the First Action was resolved adversely to the Coalition on procedural grounds, the Coalition ultimately obtained the precise result which it had sought, namely, a judgment setting aside Amendment No. 2, and the Coalition was fully vindicated in its position regarding the validity of Amendment No. 2 at the conclusion of the Second Action. Accordingly, the trial court did not abuse its discretion in determining that a reasonable fee award should include consideration of the

work associated with the First Action even though the Coalition had not prevailed in that action.

Nor are we persuaded by appellants' contention that an award of fees cannot be sustained for work associated with the First Action because none of the issues adjudicated in that earlier action had any bearing on the trial court's resolution of the merits in the Second Action. The trial court's ruling, awarding compensation for certain legal work associated with the First Action, which was useful in the Second Action and diminished the work of counsel required in the Second Action, is entirely consistent with the general principle that "part of the process and expense of litigation" may include counsel's work that precedes the filing of litigation. (*Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 656; see *Hogar Dolce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358, 1370 [by its terms section 1021.5 does not prohibit an award of attorney fees for work performed before the filing of litigation].)

We conclude by noting that we will overturn an award of attorney fees only if we find "that, under all the evidence viewed most favorably in support of the trial court's decision, no judge could reasonably have made the challenged order. [Citations.] " (*County of Kern v. Ginn* (1983) 146 Cal.App.3d 1107, 1115.) "The ' "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' [Citation.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) Because we cannot conclude no judge would have reasonably made the challenged order or that the judge was clearly wrong, we uphold the award of attorney fees.

Lastly, we grant the Coalition's request for attorney fees on appeal under 1021.5. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 638-639 [absent circumstances rendering an award unjust, fees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim at trial and on appeal].) On remand, the trial court is directed to determine the amount to be awarded for reasonable attorney fees incurred for the time spent on this

appeal. Our decision should not be read, and we express no opinion as to the amount of attorney fees to be awarded by the trial court.

DISPOSITION

The order is affirmed. Respondent Point San Pedro Road Coalition, Inc., is awarded costs and attorney fees on appeal. The matter is remanded to the trial court to determine reasonable attorney fees in connection with this appeal. (Code Civ. Proc., § 1021.5.)

_____
Petrou, J.

WE CONCUR:

_____
Siggins, P.J.

_____
Fujisaki, J.